

SENATE BILL 450

N1

11r1659
CF HB 412

By: **Senator Frosh**

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Residential Property Foreclosure Procedures – Lost Note**
3 **Affidavit**

4 FOR the purpose of prohibiting a court, in an action to foreclose a mortgage or deed of
5 trust on residential property, from accepting a certain affidavit in lieu of a copy
6 of the debt instrument unless the affidavit contains certain information; and
7 generally relating to residential property foreclosure procedures.

8 BY repealing and reenacting, without amendments,
9 Article – Real Property
10 Section 7–105.1(d)
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2010 Supplement)

13 BY adding to
14 Article – Real Property
15 Section 7–105.1(d–1)
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2010 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Real Property**

21 7–105.1.

22 (d) An order to docket or a complaint to foreclose a mortgage or deed of trust
23 on residential property shall:

24 (1) Include:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) If applicable, the license number of:
- 2 1. The mortgage originator; and
- 3 2. The mortgage lender; and
- 4 (ii) An affidavit stating:
- 5 1. The date on which the default occurred and the
6 nature of the default; and
- 7 2. If applicable, that a notice of intent to foreclose was
8 sent to the mortgagor or grantor in accordance with subsection (c) of this section and
9 the date on which the notice was sent; and
- 10 (2) Be accompanied by:
- 11 (i) The original or a certified copy of the mortgage or deed of
12 trust;
- 13 (ii) A statement of the debt remaining due and payable
14 supported by an affidavit of the plaintiff or the secured party or the agent or attorney
15 of the plaintiff or secured party;
- 16 (iii) A copy of the debt instrument accompanied by an affidavit
17 certifying ownership of the debt instrument;
- 18 (iv) If applicable, the original or a certified copy of the
19 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a
20 substitute trustee;
- 21 (v) If any defendant is an individual, an affidavit that:
- 22 1. The individual is not a servicemember, as defined in
23 the Servicemembers Civil Relief Act, 50 U.S.C. Appendix § 511; or
- 24 2. The action is authorized by the Act;
- 25 (vi) If applicable, a copy of the notice of intent to foreclose;
- 26 (vii) In addition to any other filing fees required by law, a filing
27 fee in the amount of \$300;
- 28 (viii) Subject to subsection (e) of this section:

1 1. If the loss mitigation analysis has been completed, a
2 final loss mitigation affidavit in the form prescribed by regulation adopted by the
3 Commissioner of Financial Regulation; and

4 2. If the loss mitigation analysis has not been completed:

5 A. A preliminary loss mitigation affidavit in the form
6 prescribed by regulation adopted by the Commissioner of Financial Regulation;

7 B. The loss mitigation application and a description of
8 the eligibility requirements for loss mitigation programs offered by the secured party
9 as described in subsection (c)(5) of this section;

10 C. Instructions for completing the loss mitigation
11 application, including instructions to return the completed application to the attorney
12 handling the foreclosure; and

13 D. An envelope preprinted with the address of the
14 attorney handling the foreclosure;

15 (ix) A notice to the mortgagor or grantor in substantially the
16 following form, as prescribed by regulation by the Commissioner of Financial
17 Regulation:

18 “NOTICE

19 An action to foreclose the mortgage/deed of trust on the property located at
20 (insert address) has been filed in the Circuit Court for (county).

21 A foreclosure sale of the property may occur at any time after 45 days from the
22 date that this notice is served on you.

23 You may stop the sale and reinstate your mortgage loan by paying all amounts
24 due on your loan, plus fees and costs of the foreclosure action, at any time up to one
25 business day before the sale. Please contact (insert name of authorized agent of
26 secured party) at (insert telephone number) to obtain the amount due to cure the
27 default on your mortgage loan and instructions for delivering the payment.

28 If you own and live in the home that is subject to foreclosure, your lender may
29 be required to conduct an analysis of your loan to see if you qualify for a loan
30 modification or some other loss mitigation. You must apply and provide your lender
31 with specific information as part of this analysis. The results of your lender’s analysis
32 of your loan will be provided to you in the form of an affidavit submitted to the court.

33 If your lender determines that you are not eligible for any loan modification or
34 other relief, you have the right to file a request with the court and have foreclosure
35 mediation. This will be a conference with you, someone representing your lender, and
36 a neutral third party to discuss your loan and possible options. To request foreclosure

1 mediation, you must complete the Request for Foreclosure Mediation form that will
2 accompany the lender's final loss mitigation affidavit and mail it to the court and the
3 lender's foreclosure attorney within 15 days after receipt. If you file a Request for
4 Foreclosure Mediation, your property cannot go to sale until at least 15 days after your
5 mediation has been held.

6 You are urged to obtain legal advice and the assistance of a housing counselor to
7 discuss possible loss mitigation programs, foreclosure mediation, and other options to
8 stop the foreclosure sale.

9 If you are interested in selling your home to avoid a foreclosure sale, you may
10 wish to contact a licensed real estate broker or salesperson as soon as possible.

11 Housing counseling and financial assistance programs are available through the
12 Maryland Department of Housing and Community Development. Please call (insert
13 telephone number) for information on available resources.

14 Some people may approach you about "saving" your home. You should be careful
15 about any such promises.

16 The State encourages you to become informed about your options in foreclosure
17 before entering into any agreements with anyone in connection with the foreclosure of
18 your home. There are government agencies and nonprofit organizations that you may
19 contact for helpful information about the foreclosure process. For the name and
20 telephone number of an organization near you, please call the Consumer Protection
21 Division of the Office of the Attorney General of Maryland at (insert telephone
22 number). The State does not guarantee the advice of these organizations.

23 DO NOT DELAY DEALING WITH THE FORECLOSURE BECAUSE YOUR
24 OPTIONS WILL BECOME MORE LIMITED AS TIME PASSES."; and

25 (x) If the order to docket or complaint to foreclose concerns
26 owner-occupied residential property and is accompanied by a final loss mitigation
27 affidavit:

28 1. A request for foreclosure mediation in the form
29 prescribed by regulation adopted by the Commissioner of Financial Regulation; and

30 2. An envelope preprinted with the address of the clerk
31 of the court; and

32 3. An envelope preprinted with the address of the
33 foreclosure attorney.

34 **(D-1) NOTWITHSTANDING ANY OTHER LAW, THE COURT MAY NOT**
35 **ACCEPT A LOST NOTE AFFIDAVIT IN LIEU OF A COPY OF THE DEBT INSTRUMENT**

1 REQUIRED UNDER SUBSECTION (D)(2)(III) OF THIS SECTION, UNLESS THE
2 AFFIDAVIT:

3 (1) LISTS EACH OWNER IN THE CHAIN OF TITLE OF THE DEBT
4 INSTRUMENT AND THE DATE ON WHICH EACH OWNER ACQUIRED OWNERSHIP;

5 (2) STATES WHY A COPY OF THE DEBT INSTRUMENT CANNOT BE
6 PRODUCED; AND

7 (3) DESCRIBES THE GOOD FAITH EFFORTS MADE TO PRODUCE A
8 COPY OF THE DEBT INSTRUMENT.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 July 1, 2011.